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In re Application of	:	
Guo et al.	:	
Application No.: 10/019,381	:	DECISION ON
PCT No.: PCT/CN00/00299	:	
Int. Filing Date: 30 September 2000	:	PETITION
Attorney's Docket No.: 42390.P9268	:	
For: METHOD AND SYSTEM TO SCALE DOWN	:	UNDER 37 CFR 1.47(b)
A DECISION TREE-BASED HIDDEN MARKOV	:	
MODEL (HMM) FOR SPEECH RECOGNITION	:	

This is a decision in response to the "PETITION FOR FILING BY OTHER THAN ALL THE INVENTORS PURSUANT TO 37 C.F.R. § 1.47(b)" filed on 04 December 2002 to accept the application without the signatures of inventors Qing Guo, Yonghong Yan and Baosheng Yuan.

BACKGROUND

On 30 September 2000, applicant filed international application PCT/CN00/00299. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 11 April 2002. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 30 March 2003.

On 27 December 2001, applicant filed a letter for entry into the national stage in the United States which was accompanied by a copy of the international application and the basic national fee of \$1040 as required by 35 U.S.C. 371(c). These papers were assigned application number 10/019,381.

On 04 June 2002, the United States Patent and Trademark mailed the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form

PCT/DO/EO/905) indicating that applicant was required to file an oath/declaration and a surcharge fee. The notification set a two-month time period in which to respond.

On 04 December 2002, applicant filed a "Petition Under 37 CFR 1.47(b) to Accept Application Without Inventor's Signature."

In order to satisfy the requirements of 35 U.S.C. 371(c)(4), on 04 December 2002, applicants filed the following papers:

1) a Response to Notification of Missing Requirements under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US) including a Petition under 37 CFR 1.47(a);

2) the required petition fee;

3) a petition for a four month extension of time and the required petition fee;
and,

4) an declaration of Judy L. Steinkraus and various documents intended to show that inventors Qing Guo, Yonghong Yan and Baosheng Yuan cannot be found or reached to sign the application papers and giving their last known address.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.37(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage. Applicant has not satisfied items (2), (4) and (5).

MPEP §409.03(b) states, in part:

"Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an

acceptable reason for filing under 37 CFR 1.47. Such a petition will be dismissed as inappropriate.

The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.”

With respect to item (2) above, there is no indication that a delivery of the application papers was ever attempted, nor is there any indication that any attempt has been made to locate the missing inventors. It appears that applicant merely asked someone else (Wei Wei Huang) to locate the inventors, and when she did not get back to Ms. Steinkraus, the decision was made to file the petition. Further, although applicant lists the last known addresses, applicant made no attempt to deliver the application papers to these addresses. Applicant needs to provide evidence that a diligent effort has been made to reach the inventors.

MPEP §409.03(b) states, in part:

“Where an application is executed by one other than the inventor, the declaration required by 37 CFR 1.63 must state the full name, residence, post office address, and citizenship of the nonsigning inventor. Also, the title or position of the person signing must be stated if signing on behalf of a corporation under 37 CFR 1.47(b).”

With respect to item (4) above, the declaration is unexecuted. Applicant has not provided a declaration signed by a person from Intel having authority to sign on Intel’s behalf.

MPEP §409.03(f) states, in part:

“When an inventor has agreed in writing to assign an invention described in an application deposited pursuant to 37 CFR 1.47(b), a copy of that agreement should be submitted. If an agreement to assign is dependent on certain specified conditions being met, it must be established by a statement of facts by someone with first hand knowledge of the circumstances in which those conditions have been met. A typical agreement to assign is an employment agreement where an employee (nonsigning inventor) agrees to assign to his or her employer (37 CFR 1.47(b) applicant) all inventions made during employment. When such an agreement is relied on, it must be established by a statement of a person having firsthand knowledge of the facts that the invention was made by the employee while employed by the 37 CFR 1.47(b) applicant.”

With respect to item (5) above, applicant has not submitted any evidence of sufficient proprietary interest in the application.

CONCLUSION

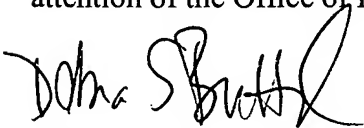
The petition under 37 CFR 1.47(b) is **DISMISSED**.

The \$130 surcharge for filing the oath/declaration after thirty months from the earliest priority has been **CHARGED** to applicant's **DEPOSIT ACCOUNT # 2-2666**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely submit the proper response will result in **ABANDONMENT**. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Should status under 37 CFR 1.47(b) not be successfully completed, the international application will be viewed as becoming abandoned with respect to the United State at midnight at the expiration of the time period set in this decision or as extended by any extension see timely paid under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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